Chapter XX

BELGIUM

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I OVERVIEW OF 2009/2010 RESTRUCTURING AND INSOLVENCY ACTIVITY

i State of the financial markets

The international financial crisis has had a significant impact on the position of the four major Belgian financial institutions (Fortis Bank, KBC, Dexia and Ethias). In addition to steps undertaken by the European Central Bank, the federal and regional governments of Belgium have provided different types of support to the Belgian financial system in 2008 and 2009, including government investments, state guarantees, government loans and an increase of depositor protection schemes.

In October 2008, the Belgian government agreed to strengthen KBC's capital by €3.5 billion. For this purpose, KBC issued in December 2008 non-transferable, non-voting core capital securities to the Belgian state. The proceeds of this transaction were used to increase core tier 1 capital in the banking business by €2.5 billion and the solvency margin on the insurance business by €1.25 billion. On 22 January 2009, KBC reached an agreement with the Flemish regional government regarding the issue of €3.5 billion-worth of non-dilutive capital securities, which was finalised on 20 July 2009. The capital support aims to enable KBC to maintain its equity basis in line with current market expectations.

On 30 September 2008, Dexia SA raised €6.4 billion from the governments of Belgium, France and Luxembourg and from existing shareholders. Belgian authorities and Belgian shareholders invested an aggregate of €3 billion.

In addition, the Belgian, French and Luxembourg governments undertook to guarantee up to €150 billion of new interbank and institutional deposits and financing, as well as new bond issuance intended for institutional investors, with a maximum maturity

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of three years, raised by Dexia SA, Dexia Banque Internationale à Luxembourg SA, Dexia Bank Belgique SA and Dexia Crédit Local SA. Following the European Commission's authorisation on 19 November 2008, the three governments and Dexia signed a formal agreement on 9 December 2008 pursuant to which the Belgian government agreed to guarantee obligations up to €90.75 billion. In March 2009, the total amount of Dexia's liabilities guaranteed by the three governments was equal to approximately €80 billion.

On 20 October 2008, the Belgian, Walloon and Flemish governments announced that they would invest €1.5 billion into Ethias Insurances, which, as a result of the decline in the share price of Dexia (in which Ethias Insurances has a 5 per cent stake), had been given until 21 October 2010 to come up with additional capital or funding. A condition to this capitalisation was a full restructuring of the insurance business of Ethias.

In October 2008, the Belgian government acquired a 100 per cent interest in Fortis Bank, the Belgian subsidiary of Fortis Holding, for a total consideration of €9.4 billion. In April 2009, the Belgian government sold 75 per cent of the Fortis Bank shares to the French bank BNP Paribas in return for a participation in BNP Paribas of approximately 11 per cent. Fortis Bank acquired an interest of 25 per cent plus one share in the Belgian insurance activities of Fortis. The remaining 75 per cent less one share are held by Fortis Holding. The deal was closed in May 2009.

In respect of depositor protection schemes, the government adopted a Royal Decree dated 14 November 2008, pursuant to which the Belgian depositor protection guarantee was increased to €100,000 for savings held at Belgian banks (with retroactive effect as of 7 October 2008). This depositor protection scheme also provides coverage for certain types of insurance products.

The two remaining major Belgian banks after the sale of Fortis Bank to BNP Paribas – KBC and Dexia SA – both passed the stress test conducted by the Committee of European Banking Supervisors, which was aimed at testing the resilience of 91 major financial institutions in the EU to absorb potential economic shocks. On the basis of the results (published on 23 July 2010), KBC and Dexia SA would keep a tier 1 capital ratio of 9.4 per cent and 10.9 per cent respectively at the end of 2011 in a worst-case scenario.

In May 2010, the Belgian Parliament adopted a draft bill aimed at improving the monitoring of the financial institutions and markets. By 31 December 2010, the Belgian National Bank should become responsible for the monitoring of the banks and insurance companies, a task that so far has been carried out by the Belgian Banking, Finance and Insurance Commission ('the CBFA'). The CBFA will remain responsible for the supervision of the financial markets, which includes stockmarket transactions and cases of market manipulation, but also publicity for banking products. In addition, a draft bill was approved that aims at strengthening the Belgian government's position in the event it must provide financial support or take participations in 'systemic' Belgian companies in financial distress (i.e., companies whose bankruptcies are likely to have a severe adverse effect on the Belgian economy, such as large financial institutions).

ii Market trends in restructuring procedures and techniques employed

The overall economic recession resulting from the financial crisis and 'credit crunch' has resulted in a significant increase in the number of bankruptcies in Belgium in 2008, 2009 and the first half of 2010.

In 2009, a record number of 9,515 companies were declared bankrupt (compared to 7,697 in 2007 and 8,518 in 2008). Between 1 January 1 and 30 June 2010, 5,283 bankruptcies were counted, which represents an increase of 4.92 per cent compared with the same period in 2009, which also was itself a record year.

Of the 9,515 companies that were declared bankrupt in 2009, 99 per cent were small or medium sized enterprises. Twenty-nine bankrupt companies employed between 50 and 100 people and eight companies counted more than 100 employees. The largest bankruptcy in terms of job loss resulted in 472 employees being laid off. In 2009, a total number of 23,820 employees lost their employment as a result of bankruptcy, which represents an increase of 18 per cent compared with 2008.

Bankruptcy proceedings were – again – by far the most common form of insolvency proceedings in 2009. However, the new Business Continuity Act, which entered into force on 1 April 2009, resulted in a significant increase in the number of judicial reorganisation proceedings opened. The old legislation on judicial reorganisations, introduced in 1997, had been a failure, both in respect of the number of composition proceedings initiated and the number of successful reorganisations effected. In 2008, only 78 judicial compositions were granted by the Belgian courts, and between 1 January and 30 March 2009, only 24. However, between 1 April and 31 December 2009, no less than 594 companies were admitted to judicial reorganisation proceedings under the new Act. During the first 12 months following the entry into force of the Business Continuity Act, a total of 898 judgments were rendered whereby a judicial reorganisation procedure was granted to companies in financial distress.

II GENERAL INTRODUCTION TO THE RESTRUCTURING AND INSOLVENCY LEGAL FRAMEWORK

Belgian law distinguishes between two types of insolvency proceedings: bankruptcy proceedings and judicial reorganisations. Bankruptcy proceedings are governed by the Bankruptcy Act of 8 August 1997 ('the Bankruptcy Act'). The judicial reorganisation is governed by the Act of 31 January 2009, relating to the continuity of businesses, which came into force on 1 April 2009 ('the Business Continuity Act').

i Bankruptcy proceedings

Pursuant to the Bankruptcy Act, a company must file for bankruptcy when it is in a situation of persistent cessation of payment (i.e., it has consistently stopped paying its debts as they fall due) and its creditworthiness is undermined. The bankruptcy proceedings may also be initiated by one or more creditors or by the Public Prosecutor.

A company is declared bankrupt by a judgment of the court. Upon the declaration of bankruptcy, the directors lose their management powers and a trustee appointed by the court takes over the control of the company.

ii Judicial reorganisation

Pursuant to the Business Continuity Act, a debtor may apply for judicial reorganisation if its business is or will at short term become threatened by financial difficulties. In that respect, the Act provides that a debtor's business is presumed to be under threat if its net equity has fallen below half of its outstanding share capital.

The Business Continuity Act offers a combination of three different options to facilitate the judicial reorganisation of companies experiencing financial difficulties: (1) the court-assisted voluntary agreement with creditors, (2) a collective agreement with the creditors and (3) a transfer of all or part of the business under supervision of the court.

A court-assisted voluntary agreement with creditors is a settlement negotiated by the debtor with a number of its creditors (at least two) with a view to reorganising its business. Such an agreement, reached without judicial involvement, must simply be filed in a register with the competent court, but will remain confidential (i.e., third parties cannot access it). The debtor can also first seek judicial protection before negotiating a reorganisation plan with some or all of its creditors. In that case, the court's role is to confirm the plan in its judgment and close the reorganisation proceedings.

A collective agreement consists of a reorganisation plan devised by the company, which is submitted to the vote of the creditors. At least half of the creditors (in both number and value of claims) must vote in favour of the reorganisation plan in order to have it approved. The plan may include measures to reduce or reschedule liabilities and interest obligations, swap debt into equity, or reduce the company's headcount. An approved reorganisation plan binds all creditors, including secured creditors, whether they have voted in favour of the plan or not. The plan must provide for payment of interest on the creditors' claims and the repayment of such claims may not be suspended for more than 24 months or, if at the end of the initial suspension the debtor requests an extension and demonstrates that the suspended claims will be paid in full, 36 months. If successfully implemented, the debtor is released from all debts included in the reorganisation plan.

A transfer of all or part of the business under supervision of the court is an option which a company may apply for when filing the petition or at a later stage in the court proceedings. However, the Public Prosecutor, a creditor or a party interested in acquiring all or part of the debtor's business, may also request the court to order such transfer in specific circumstances defined in the Business Continuity Act.

In its petition for judicial reorganisation, a company must indicate which of the aforementioned options (or which combinations thereof) it wishes to pursue.

During the proceedings and the implementation of the judicial reorganisation, the debtor in principle retains its management powers. It may, however, request the appointment of a mediator or court officer to assist it with the reorganisation. In a case of gross misconduct threatening the continuity of the debtor's business, creditors and other interested parties may seek injunctive relief, including the appointment of an administrator to take control of the debtor's business.

iii Informal methods to restructure companies in financial difficulties

A voluntary liquidation may be used as an alternative to court-controlled insolvency proceedings, provided that it is supported by a sufficient consensus among the creditors. In case of a voluntary liquidation, the shareholders decide to dissolve the company and to appoint a liquidator, who must liquidate the assets of the company to satisfy the creditors' claims. The commercial court must confirm the appointment of the liquidator. Before completion of the liquidation, the liquidator submits a proposal for the distribution of the proceeds to the commercial court for approval. It should be noted that the voluntary liquidation is only an option if the assets of the liquidated company are sufficient to satisfy the claims of all third party creditors. If such is not the case, the liquidator must, and the Public Prosecutor or the creditors may, file for bankruptcy.

iv Taking and enforcement of security

Bankruptcy

Upon bankruptcy, all enforcement actions against the bankrupt estate are suspended. There are, however, a number of exceptions:

a Secured creditors (mortgagees, pledgees and holders of floating charges) can enforce their security after completion of the bankruptcy claims verification process. This is the process where the trustee in bankruptcy checks all submitted claims against the books and accounting records of the bankrupt estate. This normally implies for these creditors that they cannot proceed with any enforcement actions for a period of approximately two months. The trustee may ask the court to suspend individual enforcement for a maximum period of one year from the bankruptcy judgment. During this period, the trustee may sell the assets which are the subject of the security, if such is in the interest of the bankrupt's estate and not detrimental to the secured creditors.

b Owners can claim repossession of their goods in the bankrupt estate's possession. Claims for repossession must be filed prior to the completion of the bankruptcy claims verification process, failing which the ownership right may be lost. Before returning the goods, the trustee in bankruptcy may ask reimbursement of any expenses made in connection with the storage or return of such goods. Movable property that is subject to retention of title clauses may be reclaimed provided that it has not become immovable by incorporation and has not been merged with other moveable goods.

c Security over assets in other jurisdictions remains enforceable in accordance with local rules.

d Contractual set-off arrangements remain enforceable.

e Security over financial instruments and cash accounts remains enforceable.

Rights of enforcement against third party guarantors or security providers are not affected by the suspension.

Judicial reorganisation

Upon application for a judicial reorganisation, all existing liabilities are frozen, although the debtor may still voluntarily pay such liabilities. Liabilities arising after the court decision

relating to the reorganisation must be paid by the debtor on their due date and will have priority over all ordinary liabilities and, in special circumstances, secured creditors, if the debtor subsequently becomes bankrupt. During reorganisation proceedings, parties cannot apply for the bankruptcy or forced liquidation of the debtor. Enforcement actions against the debtor, including the recovery by creditors of their assets in the possession of the debtor, are generally suspended. Here as well, there are a number of exceptions:

a Security over assets in other jurisdictions remains enforceable in accordance with local rules.

b Contractual set-off arrangements as well as security over receivables, financial instruments and cash accounts remain enforceable.

Rights of enforcement against third-party guarantors or security providers are not affected by the suspension. In the event of a court-authorised sale of the debtor's business in the context of a reorganisation, securities on assets will attach to the proceeds of the sale of such assets.

Voluntary liquidation

A voluntary liquidation does not trigger any suspension of enforcement action against debtors.

v Duties of directors of companies in financial difficulties

General regime of liability

Under the general liability regime, directors are contractually responsible for performance of their duties and individually liable towards the company for any shortcoming. The requisite standard for care and skill is that of a reasonably prudent and diligent business person. In that respect, courts have only a limited right of review. Only manifestly unacceptable behaviour will trigger a director's liability. An action based on a breach of the duty of care can only be brought by the company (in case of bankruptcy, by the trustee).

Directors may also be held jointly and severally liable towards the company or third parties for any losses suffered as a result of a violation of the provisions of the Belgian Company Code or the by-laws of the company. Examples include a violation of the publication rules relating to certain corporate information, a breach of the conflicts of interest rules, a failure to comply with the procedures applicable to important losses of shareholder equity, etc. An action for liability on the basis of a breach of the by-laws or the Company Code can be brought either by the company or by third parties who have incurred damages as a result of the breach.

An individual director can only escape such liability by demonstrating that he did not participate in the violation and that he has immediately informed the general meeting of shareholders thereof.

In addition, directors are subject to the general principles of tort law, set forth in the Articles 1382 and 1383 of the Belgian Civil Code. They may be held liable for damages caused to third parties as a result of a breach of the general duty of care (as opposed to the a breach of contractual duties towards the company). The third

party seeking compensation must provide evidence of the damages suffered, the breach committed by the directors and the causal link between both.

Specific liabilities in case of insolvency

The general liability regime described *supra* also applies in case of insolvency. However, other specific liabilities can be triggered.

The Belgian Company Code requires the board of directors of a company, when, as a result of losses suffered, net equity falls below half of the company's outstanding share capital, and again when it falls below a quarter of the share capital, to call a meeting of shareholders, which must decide whether to continue the operations of the company or to cease the operations and liquidate the company. Failure to do so in principle triggers the liability of the directors in respect of all liabilities that continue to arise or accrue after the date when the shareholders' meeting should have been held.

A specific form of liability applies in the case of bankruptcy of a company with insufficient assets available to meet outstanding debts. The directors, former directors or persons who had *de facto* authority to manage the bankrupt company may, if they were grossly negligent in a way that contributed to the bankruptcy, be held personally liable for all or part of the liabilities of the company up to the amount by which such liabilities exceed the company's assets.

The Bankruptcy Act provides that the trustee of a bankrupt estate must, upon his or her appointment, proceed with the auditing and correction of the financial statements of the company. If no financial statements are available or if substantial corrections are required, the directors may be held personally liable for the costs of preparing or correcting the financial statements.

Finally, certain acts committed by directors of a company that is in state of bankruptcy are subject to criminal sanctions. Such acts include:

a payment to or preferential treatment of a creditor, with a view to postponing bankruptcy;

b effecting purchases with a view to reselling below market value in order to postpone bankruptcy;

c failure to comply with the obligation to provide information requested by the liquidators or judge-commissioner, in accordance with Article 53 of the Bankruptcy Act;

d failure to file for bankruptcy within the term prescribed by law; and

e failure to provide the necessary information in the bankruptcy filing;

vi Claw-back actions

Bankruptcy

The Bankruptcy Act contains a number of provisions allowing creditors to challenge certain actions made by or with a bankrupt debtor after the moment the debtor has suspended the payment of its debts as they fall due. In principle, this moment is deemed to be the date of the bankruptcy judgment. The court may decide, however, to fix the moment of the suspension of payment at an earlier date, with a maximum of six months, provided there are serious and objective circumstances that unambiguously indicate that

the debtor has indeed stopped paying its debts prior to the date of the judgment. This period is referred to as the 'suspect period'.

The following actions and payments that have been made during the suspect period or after the bankruptcy judgment may be challenged:

a disposals of assets made without consideration, or at a significant undervalue;
b payments made in respect of liabilities that were not yet due and payable;
c payments in kind, unless the payment in kind is an agreed enforcement method of a financial collateral arrangement;
d all transactions with a counterparty who had knowledge of the insolvency of the debtor; and
e new security granted for pre-existing debts.

Judicial reorganisation

Belgian law protects certain payments and transactions made in the context of a judicial reorganisation against subsequent insolvency challenge. The insolvency rules that disallow payments in respect of unmatured debts, payments in kind and transactions with counterparties who have knowledge of the insolvency of the debtor, are not applicable to debtors subject to judicial reorganisation.

III RECENT LEGAL DEVELOPMENTS

The main recent legal development in relation to insolvency proceedings remains the adoption of the Business Continuity Act of 31 January 2009, which entered into force on 1 April 2009.

The former legislation relating to bankruptcy and judicial composition imposed very strict conditions, as a result of which judicial composition has never offered a real alternative to bankruptcy. As soon as the conditions for bankruptcy were met (i.e., when a company was in a situation of persistent cessation of payment and was unable to obtain credit), the company had an obligation to petition for bankruptcy within one month. The new Business Continuity Act provides that being in a state of bankruptcy does not in itself rule out the option of opening or continuing reorganisation proceedings. The continuity of the business therefore has become a real alternative to bankruptcy: the aim of the reorganisation, rather than the fact the debtor is facing bankruptcy, is now the deciding factor when choosing between bankruptcy proceedings and reorganisation proceedings.

In addition thereto, the Business Continuity Act has introduced a number flexible tools aimed at facilitating business recovery:

a If a debtor is unsure what to do, it may apply for the appointment of a company mediator to facilitate the reorganisation. The mediator will act as an intermediary between the company and its creditors and help the enterprise develop its strategy. Experienced business people may be appointed as company mediators on an *ad hoc* basis, with a view to negotiating voluntary agreements with one or more creditors. Such negotiations remain confidential, unless the company chooses to disclose them.

b Different measures have been put in place in order to reduce the costs of reorganisation proceedings. These include the appointment of a judge delegate, who is a member of the Commercial Court, instead of a judicial commissioner (which, under the former judicial composition proceedings, was usually a person external to the court, such as a lawyer or an accountant).

c The procedure for verification of claims has been made less onerous for creditors.

d The company may, at its own initiative, terminate existing contracts (with the exception of employment contracts).

e The maximum period for the implementation of a reorganisation plan has been increased from two years to five years.

f A more flexible regime can be applied to the restructuring of employment arrangements.

g A major tax obstacle to the reorganisation of debt will be lifted: profits of the company resulting from depreciations booked in connection with the judicial reorganisation of debts can potentially be exempted, in accordance with the rules that still need to be defined by Royal Decree.

IV SIGNIFICANT TRANSACTIONS, KEY DEVELOPMENTS AND MOST ACTIVE INDUSTRIES

As mentioned in Section I *supra*, 9,515 companies were declared bankrupt in 2009, 99 per cent of which were small or medium-sized enterprises. In 2009, a total number of 23,820 people lost their employment as a result of bankruptcy.

The sectors that were (and traditionally are) most affected by the economic crisis are the construction sector, the retail industry, the car manufacturing and sales sector, and the restaurant and bar industry.

In 2009, the largest bankruptcy was that of the Dussman Group, a multinational group offering facility services to companies, such as technical services, catering, security and reception services, cleaning, commercial and energy management and nursing and care services. As a result of this bankruptcy, 472 people lost their employment. It was the fourth-largest bankruptcy in Belgium of the past decade, after the airline company Sabena in 2001 (7,845 jobs lost), Arrow G&F in 2003 (666 jobs) and Barras in 2001(611 jobs). The largest bankruptcy in 2010, so far, has been that of Mitra Energy and Infrastructure, a company located in Wavre, which developed energy conversion systems. The bankruptcy resulted in the loss of 225 jobs.

As previously mentioned, during the first 12 months following the entry into force of the Business Continuity Act, a total of 898 judicial reorganisation procedures were opened. As at the end of March 2010, 140 of the companies that had applied for judicial reorganisation during the first year had gone bankrupt. With respect to 41 companies, a collective agreement with creditors was ratified in court and 12 businesses were transferred under court supervision. For 113 companies, the judicial reorganisation proceedings were closed without any particular consequence (no bankruptcy, collective agreement or transfer of business). The other companies that had entered into judicial reorganisation proceedings, are still pending.

Those that made most use of judicial reorganisation were the construction industry and services industry (consulting, accountancy, etc.), followed by retail and the restaurant business. The metal industry, transport sector and printing and publishing were also significantly represented. From the available figures, it appears that mainly companies facing acute cashflow problems make use of judicial reorganisation proceedings.

V INTERNATIONAL

International insolvency proceedings are governed by Chapter XI of the Belgian Code of Private International Law, adopted on 16 July 2004 ('the PIL Code'). To a large extent, the provisions of the PIL Code were inspired by the European Regulation on Insolvency Proceedings (Council Regulation 1346/2000) ('the Insolvency Regulation') and the UNCITRAL Model Law.

The PIL Code is subsidiary to the Insolvency Regulation. In consequence, the provisions of the PIL Code do not apply when the Insolvency regulation applies.

The PIL Code adopts the distinction between main proceedings and territorial proceedings. Main proceedings cover all assets of the debtor, wherever they are situated. Territorial proceedings only affect those assets that are located in the territory of the State where the proceedings are opened. Both the jurisdiction rules and the effect of insolvency proceedings depend on this distinction. The jurisdiction rules for main proceedings and for territorial proceedings are different. It is important to note that these jurisdiction rules are of public policy, which implies that the parties cannot contractually provide otherwise.

i Main insolvency proceedings

Belgian courts have jurisdiction to open main insolvency proceedings, if the main establishment or registered office of the debtor is located in Belgium. The concept of 'main establishment' is to be determined by 'taking into account primarily the centre of management, as well as the centre of the debtor's business and activities, and in subsidiary order the statutory seat'. Although its content is very close to the notion of 'centre of main interest' used under Article 3.1 of the Insolvency Regulation, it is not identical, which leaves room for interpretation by the Belgian courts.

It is also worth noting that pursuant to the PIL Code, jurisdiction is determined on the basis of the location of the main establishment or the registered office. This provision allows Belgian courts to open insolvency proceedings outside the scope of the Insolvency Regulation. If the debtor's centre of main interest is not located in an EU Member State (with the exception of Denmark), a Belgian court can open main insolvency proceedings, (1) if the 'main establishment' is located in Belgium, although the registered office is located in a third country, or (2) if the registered office is located in Belgium, while the main establishment (or centre of main interest) is situated abroad. As a result, Belgian courts are able to maintain their jurisdiction to open main proceedings relating to a Belgian subsidiary of an international group.

ii Territorial insolvency proceedings

In respect of territorial proceedings, the PIL Code provides that Belgian courts have jurisdiction to open territorial proceedings if the debtor has an 'establishment' in Belgium. This corresponds to what is provided in Article 3.2 of the Insolvency Regulation. The mere presence of local assets is not a sufficient basis for allowing territorial proceedings.

When main proceedings are opened in another country, the territorial proceeding can either be a winding-up or a reorganisation proceeding. In this respect, the PIL Code did not copy the restriction of Article 3.3 of the Insolvency Regulation, which provides that territorial proceedings opened after main proceedings must be aimed at winding-up the debtor. As a result, main insolvency proceedings opened in a third country, for example, do not prevent a reorganisation of the Belgian subsidiary or branch. It should be noted, however, that it is difficult (if not impossible) to rely on this possibility in relation to third countries that meet the principle of reciprocity. In such case, the Belgian debtor who is subject to territorial proceedings is under an obligation to coordinate its actions with the foreign administrator in the main proceedings and to cooperate with him or her. The debtor will not be able to comply with these duties if the territorial proceedings tend to reorganisation, while the main proceedings are aimed at winding up the company.

Contrary to the Insolvency Regulation, the PIL Code does not distinguish between territorial proceedings opened prior to the opening of main proceedings and territorial proceedings opened after the opening of main proceedings. As a result, the more restrictive conditions that apply to the opening of prior territorial proceedings pursuant the Insolvency Regulation, are not required by the PIL Code. This means that, under Belgian law, a creditor has the possibility to request the opening of territorial proceedings even if the insolvent debtor has its main establishment or registered office in Belgium.

iii Recognition and enforcement of foreign judgments

A foreign judgment concerning the opening, the conduct or closing of insolvency proceedings that fall outside the scope of the Insolvency Regulation are in principle recognised in Belgium without court intervention. An exequatur is only required in relation to the enforcement of such decision. As a result, as from the moment of the opening of the foreign main insolvency proceedings, the debtor can, in accordance with the *lex concursus*, no longer dispose of its assets situated in Belgium. Moreover, the recognition of a foreign decision implies that the administrator of the main proceedings may exercise all powers conferred on him by the foreign judgment, which means that it may request the opening of territorial proceedings as well as temporary and conservative measures in Belgium.

General requirements for the recognition and enforcement of foreign judgment are that (1) the recognition or enforcement of the foreign judgment should not be a manifest violation of public policy, (2) the foreign courts must have respected the rights of the defendant, (3) the foreign judgment should be final, (4) the assumption of jurisdiction by the foreign court has not breached certain principles of Belgian law and

(5) the foreign judgment does not infringe on certain rights of the creditors (e.g., rights *in rem*, creditors with statutory privileges).

VI FUTURE DEVELOPMENTS

The Business Continuity Act of 2009, which introduced new and flexible tools to reorganise businesses, has been an undoubted success. No less than 898 judicial reorganisation procedures were opened in the first 12 months, as opposed to a total of 78 judicial compositions granted during the course of 2008 under the old legislation. Although this increase is significant, it should still be noted that less than 10 per cent of companies in financial distress enter into judicial reorganisation proceedings in an attempt to avoid bankruptcy; new initiatives to highlight the opportunities under the new legislation are therefore required, as it seems that a majority of companies in financial distress are still not aware of them or do not consider them relevant to their particular situations.

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